

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte ROBERT C. HEATH AND JETT E. STUBBS

MAILED

MAR 14 2006

U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Appeal No. 2006-0630
Application No. 09/491,094

ON BRIEF

Before FRANKFORT, McQUADE, and BAHR, Administrative Patent Judges.
McQUADE, Administrative Patent Judge.

DECISION ON APPEAL

Robert C. Heath et al. appeal from the final rejection of claims 1-3. Claims 4-10, the only other claims pending in the application, stand allowed.

This is the second appeal to this Board involving the instant application. The first appeal (Appeal No. 2003-0107) resulted in a decision (mailed June 19, 2003) reversing the examiner's rejection of claims 1-3.

THE INVENTION

The invention relates to "disposable lids for cups" (specification, page 1). Representative claims 1 and 2 read as follows:

1. A disposable lid for a cup comprising an annular clamp adapted to be seated on a rim of the cup, said clamp having inner and outer lips to grip inner and outer walls of a lip of the cup inserted therebetween and a spout extending upwardly from a top of said clamp to a discharge port at an apex thereof, an inner wall of said clamp and an inner wall of said spout converging smoothly to said discharge port, said spout being entirely above said clamp.

2. A disposable lid for a cup comprising an annular clamp adapted to be seated on a rim of the cup, said clamp having inner and outer lips to grip inner and outer walls of a lip of the cup inserted therebetween and a frustoconical spout extending upwardly from said rim to a discharge port at an apex thereof, said spout having a truncation in the shape of a horizontal plane tangent to a bottom wall of a horizontal cylinder and a base inside diameter equal to a top inside diameter of said clamp wherein an inner wall of said clamp and an inner wall of said spout converge smoothly to said discharge port.

THE REJECTIONS

Claims 1-3 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,961,510 to Dvoracek.

Claims 2 and 3 also stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Dvoracek.

Attention is directed to the main and reply briefs (filed January 13, 2005 and May 23, 2005) and the final rejection and answer (mailed September 10, 2004 and March 24, 2005) for the

respective positions of the appellants and examiner regarding the merits of these rejections.

DISCUSSION

I. The 35 U.S.C. § 102(b) rejection of claims 1-3 as being anticipated by Dvoracek

Dvoracek discloses an auxiliary top for a conventional beverage container. The top embodies a comfortable, sanitary and drip-free dispenser which fits readily and securely to the top of the container and prevents direct contact between the container and a drinker's mouth and lips (see column 2, lines 7-30). The following passage from the reference describes the essential details of the top and the manner in which it engages a container:

The present invention provides an auxiliary top [10] for a beverage container [12] of the type that includes a top [14] that is joined to a container body [16]. The top and the body of the container are joined at an upstanding peripheral ridge [32] and the container furthermore has an aperture [22] for permitting beverage flow. The auxiliary top of the invention includes a generally circular base [25]. A pedestal-like member [24] is located adjacent the periphery of the base. Such pedestal-like member has a generally arcuate shape and includes a plurality of apertures [26] at the top. The top comprises a single integral article of resilient material that includes a circumferential skirt [28] for engaging the container. The skirt is joined to a point intermediate the height of the base. The interior of the skirt includes lower and upper portions [34, 36] that taper inwardly to a

point intermediate the interior of the skirt to define regions of interior diameter exceeding and less than the outer diameter of the upstanding peripheral ridge [column 2, lines 33-51, reference numerals added].

Anticipation is established only when a single prior art reference discloses, expressly or under principles of inherency, each and every element of a claimed invention. RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). It is not necessary that the reference teach what the subject application teaches, but only that the claim read on something disclosed in the reference, i.e., that all of the limitations in the claim be found in or fully met by the reference. Kalman v. Kimberly Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

As framed and argued by the appellants (see pages 4-7 in the main brief), the dispositive issue with respect to the anticipation rejection of claim 1 is whether Dvoracek meets the limitations in the claim requiring the lid to comprise an annular clamp having inner and outer lips to grip inner and outer walls of a lip of a cup. The examiner's position that these limitations read on Dvoracek's lid or top, and more particularly on the structure

embodied by skirt 28 and the opposed portion of base 25 which are shown in Figure 3 as enveloping the upstanding peripheral ridge 32 on container 12, is well taken. While accurately observing that Dvoracek does not describe this structure as gripping the inner and outer walls of the container ridge 32, the appellants have not cogently explained, and it is not evident, why such structure does not, under principles of inherency, constitute an annular clamp having inner and outer lips which are capable of gripping the inner and outer walls of the lip of a suitably sized cup. As correctly pointed out by the examiner, claim 1 recites a disposable lid per se, not a disposable lid in combination with a cup. Hence, the claim does not actually require the inner and outer lips of the annular clamp to be in positive gripping engagement with the inner and outer walls of a cup lip, but only that they be capable of such engagement.

Thus, the appellants' argument that the subject matter recited in claim 1 distinguishes over that disclosed by Dvoracek is unpersuasive.

Accordingly, we shall sustain the standing 35 U.S.C. § 102(b) rejection of claim 1 as being anticipated by Dvoracek.

We shall not sustain, however, the standing 35 U.S.C. § 102(b) rejection of claim 2, and dependent claim 3, as being anticipated by Dvoracek.

In short, the examiner's determination that Dvoracek's lid or top responds to the limitations in claim 2 requiring a frustoconical spout having a truncation in the shape of a horizontal plane tangent to a bottom wall of a horizontal cylinder stems from an unreasonable interpretation of both the claim language in question, which must be read in light of the underlying disclosure (see specification page 6 and drawing Figure 3), and the Dvoracek disclosure.

II. The 35 U.S.C. § 103(a) rejection of claims 2 and 3 as being unpatentable over Dvoracek

In addition to not teaching a lid or top meeting the limitations in claim 2 requiring a frustoconical spout having a truncation in the shape of a horizontal plane tangent to a bottom wall of a horizontal cylinder, Dvoracek would not have suggested same to a person having ordinary skill in the art.

Consequently, we shall not sustain the standing 35 U.S.C. § 103(a) rejection of claim 2, and dependent claim 3, as being unpatentable over Dvoracek.

SUMMARY

The decision of the examiner to reject claims 1-3 is affirmed with respect to claim 1 and reversed with respect to claims 2 and 3.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART

Charles E. Frankfort

CHARLES E. FRANKFORT
Administrative Patent Judge

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Appeal No. 2006-0630
Application No. 09/491,094

Page 8

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